United Nations A/60/229–S/2005/534

General Assembly
Security Council

Distr.: General
15 August 2005

Original: English

General Assembly
Sixtieth session
Item 77 of the provisional agenda*
Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

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Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly and to the members of the Security Council the tenth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, submitted by the President of the International Tribunal for Rwanda in accordance with article 32 of its statute (see Security Council resolution 955 (1994), annex), which states:

> "The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly."

05-46131 (E) 200905

Tenth Annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Summary

Overview. During the period under review, from 1 July 2004 to 30 June 2005, the Trial Chambers of the International Criminal Tribunal for Rwanda delivered three trial judgements in cases involving three accused (*Ndindabahizi*, *Rutaganira* and *Muhimana*). Thus, 19 judgements involving 25 accused have been delivered since the commencement of the first trial in January 1997. Of these 25 persons, 22 have been convicted and 3 acquitted. In addition, 25 persons are currently on trial, which brings the number of persons whose trials have either been completed or are in progress to 50. They include 1 Prime Minister, 11 Government Ministers, 4 Prefects, 7 *bourgmestres* and many other high-ranking personalities. This illustrates the importance of the Tribunal in establishing the guilt and innocence of alleged leaders in 1994 who would probably not have been brought before a court had it not been for the Tribunal. Sixteen detainees are awaiting trial.

The Appeals Chamber delivered four appeals judgements in respect of five persons during the period under review. Appeals of trial judgements in 10 cases, as well as 28 interlocutory appeals and one application for review of a trial judgement, are currently under consideration by the Appeals Chamber.

New trials. The Tribunal has commenced five trials involving seven accused during the period under review. The *Simba* trial, which commenced on 30 August 2004, concluded with closing arguments on 8 July 2005. The *Seromba* trial (one accused) and the joint *Military II* trial (four accused) started on 20 September 2004. In the Rutaganira case, which commenced on 8 December 2004, the Trial Chamber accepted a plea of guilt to a crime against humanity (extermination) and acquitted the accused of all other charges. On 14 March 2005, he was sentenced to six years imprisonment. The *Rwamakuba* trial (one accused) commenced on 9 June 2005. These trials were heard in conjunction with four joint cases — *Butare* (six accused), *Military I* (four accused), *Government* (four accused) and *Karemera et al.* (three accused). The first three of these joint trials have reached the stage of the presentation of the defence case.

Completion strategy. A revised completion strategy was submitted to the Security Council on 23 May 2005 (S/2005/336, enclosure) in conformity with Security Council resolution 1503 (2003). It confirms that the Tribunal is on course to complete trials involving 65 to 70 persons by 2008, depending on progress in present and future trials. The success of the completion strategy is dependent on the assistance and cooperation of States. They are requested to assist with the apprehension of the indictees and suspects who remain at large. Member States are also asked to accept the transfer of cases for further investigation and trials.

The completion strategy is premised on the Prosecutor concentrating on those individuals who are alleged to have been in positions of leadership and bear the gravest responsibility for the crimes committed. Accused and suspects who are alleged to have been mid- to low-level participants will be transferred to national jurisdictions, including Rwanda, for trial. By 30 June 2005, the Prosecutor had transferred the files of 15 suspects to Rwanda for this purpose.

The Tribunal must be provided with sufficient resources if it is to comply with Security Council resolution 1503 (2003). During the period under review, the United Nations administration imposed a freeze on the recruitment of new staff at the Tribunal, due to delays in the payment of contributions to the ad hoc tribunals by Member States. The situation became critical and threatened to have a significant effect on the completion strategy. The lifting of the freeze at the beginning of 2005 allowed the Tribunal to recruit key personnel directly related to court proceedings.

A fourth courtroom was inaugurated on 1 March 2005, financed through voluntary contributions from the Governments of Norway and the United Kingdom of Great Britain and Northern Ireland. It was less expensive than any of the previous courtrooms, was constructed within four weeks and was used for trials from the date of its inauguration. The fourth courtroom is an important element of the Tribunal's completion strategy. With nine ongoing trials and only three courtrooms, the trials had to be conducted in morning and afternoon shifts and thus progressed at a slow pace. Each shift allows for about four efficient hours in the courtroom, whereas a full-day session allows a Chamber to sit for about six hours. This had a particular impact on the joint trials, which require a great deal of time in the courtroom. The construction of the fourth courtroom has facilitated their steady progress.

Ad litem judges. In September 2004, the Secretary-General appointed four ad litem judges to the Tribunal, following requests by its President. This brought the number of ad litem judges at the Tribunal to nine, the maximum number permitted under Security Council resolution 1512 (2003). The arrival of these four ad litem judges made it possible to commence two trials. The nine ad litem judges have so far been involved in nine trials.

Relationship with Rwanda. High-level contacts between the Tribunal and Rwanda have been maintained. Officials from the Tribunal and Rwanda met as often as necessary to strengthen cooperation and increase awareness and support for the Tribunal's work.

Outreach programme. The outreach programme continues to be a priority, with the Information Centre in Rwanda being its focal point. A cornerstone of the programme is capacity-building. To this end, seminars and workshops on international humanitarian and criminal law were held for Rwandan legal practitioners.

I. Specific information

1. The present annual report is submitted to the General Assembly and the Security Council by the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, pursuant to Article 32 of the Tribunal's Statute.

A. Office of the President

2. The President of the Tribunal is Judge Erik Møse (Norway), and the Vice-President is Judge Arlette Ramaroson (Madagascar).[1]

Completion strategy

3. During the period under review, the President updated the Tribunal's completion strategy in consultation with the Prosecutor. The completion strategy document was first submitted in July 2003, followed by updated and revised versions in September 2003, April 2004, November 2004 and May 2005. On 23 November 2004 and 13 June 2005, the President and the Prosecutor presented their assessment of the implementation of the completion strategy to the Security Council, in conformity with Council resolution 1534 (2004).

4. On the basis of currently available information, it is projected that trials involving 25 accused, which are currently in progress, could be completed in the course of 2006 and 2007. New trials will start as soon as Trial Chamber capacity is available. The Tribunal is currently on course to complete trials involving 65 to 70 persons by 2008, the deadline set by the Security Council.

5. Essential to the completion strategy is the increase in judicial capacity facilitated by the creation of a pool of ad litem judges, pursuant to Security Council resolutions 1431 (2002) and 1512 (2003). During the period under review, the Secretary-General appointed four ad litem judges to the Tribunal, bringing the number of ad litem judges at the Tribunal to nine, the maximum number permitted. The arrival of these four ad litem judges made it possible to start two new trials.

Scheduling of trials

6. One of the main managerial duties of the President is the scheduling and planning of present and future trials. To enable maximum utilization of resources and in the interest of efficiency, trials are conducted either in morning and afternoon shifts in the same courtroom (shift system) or at the same time as other trials (twin-tracking system). When scheduling cases, priority is always given to joint trials. Experience shows that the twin-tracking system is most efficient and produces maximum results when a joint trial is twin-tracked with the trial of a single accused. Two new trials are scheduled to commence in the second half of 2005.

Rulings

7. The President ruled on applications for review of the Registrar's decisions on matters arising from fee disputes, remuneration for expert witnesses, prohibition of contact in respect of detainees and denial of requests by defence teams to interview detainees. As a member of the Bureau, the President considered applications from the defence for the disqualification of judges and applications from two convicted prisoners for commutation of their sentences.

B. Chambers

8. The Chambers are composed of 16 permanent judges and a maximum of 9 ad litem judges. Nine permanent judges are members of the three Trial Chambers, which is supplemented by ad litem judges. Seven permanent judges are members of the Appeals Chamber, five of whom sit at any one time.

9. During the period under review, the composition of the Chambers was as follows:

(a) Trial Chamber I: Judge Erik Møse (Norway), Judge Jai Ram Reddy (Fiji) and Judge Sergei Alekseevich Egorov (Russian Federation);

(b) Trial Chamber II: Judge William Hussein Sekule (United Republic of Tanzania), Judge Arlette Ramaroson (Madagascar) and Judge Asoka de Silva (Sri Lanka);[2]

(c) Trial Chamber III: Judge Andrésia Vaz (Senegal), Judge Khalida Rashid Khan (Pakistan) and Judge Dennis Charles Michael Byron (Saint Kitts and Nevis);

(d) Appeals Chamber: Judge Theodor Meron (United States of America), Judge Mohamed Shahabuddeen (Guyana), Judge Florence Mumba (Zambia), Judge Mehmet Güney (Turkey), Judge Fausto Pocar (Italy), Judge Wolfgang Schomburg (Germany) and Judge Inés Mónica Weinberg de Roca (Argentina);

(e) Ad litem judges: Judge Solomy Balungi Bossa (Uganda), Judge Flavia Lattanzi (Italy), Judge Lee Gacugia Muthoga (Kenya), Judge Florence Rita Arrey (Cameroon), Judge Emile Francis Short (Ghana), Judge Karin Hökborg (Sweden), Judge Taghrid Hikmet (Jordan), Judge Seon Ki Park (Republic of Korea) and Judge Gberdao Gustave Kam (Burkina Faso).

Trial Chamber I

10. During the period under review, Trial Chamber I rendered one judgement, conducted trials in two cases involving four and one accused, respectively, and attended to pre-trial matters in four single-accused cases.

The Prosecutor v. Emmanuel Ndindabahizi

11. On 15 July 2004, Emmanuel Ndindabahizi, a former Minister of Finance, was unanimously convicted of genocide and crimes against humanity (extermination and murder) and sentenced to imprisonment for the remainder of his life. This trial lasted only 29 days, and judgement was rendered 10 and a half months after its start.

The Prosecutor v. Theoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva (Military I Case)

12. Significant progress was made in this trial, involving four alleged senior military leaders in the Rwandan Armed Forces in 1994. The prosecution closed its case on 14 October 2004, having presented 82 witnesses over 202 trial days. The Chamber denied defence motions for judgements of acquittal at the close of the prosecution case. The defence case, which was originally scheduled for 12 January 2005, had to be adjourned following the withdrawal of an assigned lead counsel by the Registrar. The trial resumed on 11 April 2005, following the assignment of a new lead counsel. From that point, 23 defence witnesses testified over 34 trial days.

The Prosecutor v. Aloys Simba

13. The trial of this accused, who in 1994 was a retired military officer and a former member of parliament, commenced on 30 August 2004 and was heard in its entirety during the period under review. The prosecution called 16 witnesses over 29 trial days and closed its case on 10 November 2004. The defence commenced its case on 13 December 2004 and presented 20 witnesses, including the accused, over 22 trial days. Most of the witnesses were heard in the Tribunal's new fourth courtroom. Closing arguments were heard on 7 and 8 July 2005.

Pre-trial matters

14. The Chamber attended to pre-trial matters in four cases. In the case of *The Prosecutor v. Mpambara*, a motion by the prosecution to amend the indictment was granted. The accused pleaded not guilty to the additional charges at a further initial appearance. The Chamber also held a status conference to discuss final preparations for the commencement of trial, which is scheduled for 19 September 2005. In the case of *The Prosecutor v. Gatete*, two decisions, including on the granting of leave to the prosecution to amend the indictment, were issued. The Chamber also rendered two decisions concerning the translation of documents and witness protection in the case of *The Prosecutor v. Kanyarukiga* and a decision on assignment of counsel in case of *The Prosecutor v. Nchamihigo*.

Trial Chamber II

15. During the period under review, Trial Chamber II conducted trials in four cases involving a total of 15 accused and attended to pre-trial matters in five single-accused cases.

The Prosecutor v. Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi and Elie Ndayambaje (Butare Case)

16. This very voluminous trial has progressed to an advanced stage. The prosecution closed its case on 4 November 2004 after 58 witnesses testified over 212 trial days. The defence case commenced on 31 January 2005, when the first accused opened her defence. Twenty-four defence witnesses have thus far testified. Thirty written and 27 oral decisions were rendered during the period under review.

The Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Prosper Mugiraneza, and Jérôme Bicamumpaka (Bizimungu et al.)

17. On 23 June 2005, the prosecution in this joint trial of four alleged government ministers closed its case after 57 witnesses had testified over 178 trial days. The defence case is scheduled to commence on 1 November 2005. During the period under review, 44 written and 19 oral decisions were rendered.

The Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, Francois-Xavier Nzuwonomeye and Innocent Sagahutu (Military II Case)

18. This joint trial of four alleged senior military officers commenced on 20 September 2004. Twenty-eight prosecution witnesses have so far testified over 85 trial days. Twenty written decisions and 23 oral decisions have been rendered since the commencement of the trial.

The Prosecutor v. Tharcisse Muvunyi

19. This trial commenced on 28 February 2004. Eighteen prosecution witnesses testified over 36 trial days. The prosecution case was completed in July 2005.

Pre-trial matters

20. The Chamber attended to pre-trial matters in five cases. In the case of *The Prosecutor v. Renzaho*, there was a further initial appearance and a status conference on 3 June 2005. A status conference was also held in the case of *The Prosecutor v. Bisengimana* to ascertain the readiness of the parties to proceed to trial. The Chamber carried out pre-trial activities in the cases of *The Prosecutor v. Nzabirinda*, *The Prosecutor v. Nsengimana* and *The Prosecutor v. Rugambarara*.

Trial Chamber III

21. During the period under review, Trial Chamber III rendered two judgements, conducted trials in two cases involving 2 accused and attended to pre-trial matters in cases involving 10 accused.

The Prosecutor v. Mikaeli Muhimana

22. On 28 April 2005, Mikaeli Muhimana, a *conseiller*, was convicted of genocide and crimes against humanity (murder and rape) and sentenced to imprisonment for the remainder of his life. This judgement made a significant contribution to the Tribunal's jurisprudence on rape. The trial in this case, which commenced on 29 March 2004, closed on 20 January 2005 after the presentation of closing arguments. During the course of 34 trial days, 19 prosecution witnesses and 33 defence witnesses testified.

The Prosecutor v. Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse and Joseph Nzirorera

23. The trial in this case originally commenced on 27 November 2003. Following an appeal filed by the defence, the Appeals Chamber, in its decision of 28 September 2004 and reasons on 22 October 2004, disqualified the judges engaged in the trial and ordered that the trial start *de novo* before a newly constituted Trial Chamber (see para. 41). On 14 February 2005, Rwamakuba was

severed from this case and is now being tried as a single accused (see para. 26). The joint trial of the remaining three accused is scheduled to start on 5 September 2005.

The Prosecutor v. Vincent Rutaganira

24. On 8 December 2004, Vincent Rutaganira, a *conseiller*, pleaded guilty to crimes against humanity (extermination). The Chamber accepted the guilty plea and, as Rutaganira had been jointly indicted, ordered the severance of the indictment. The parties presented their submissions on sentencing and a joint recommendation was made for a term of imprisonment in the range of six to eight years. Rutaganira's conduct was found to have constituted an omission and resulted in complicity. On 14 March 2005, the accused was sentenced to six years' imprisonment.

The Prosecutor v. Athanase Seromba

25. The trial of this accused, a Catholic priest at the parish of Nyange in Kibuye prefecture, commenced on 20 September 2005. The prosecution closed its case on 25 January 2005 after 15 witnesses had testified over 25 trial days. The defence case was scheduled to commence on 10 May 2005. However, on 15 April 2005, the accused requested a withdrawal of his assigned lead counsel, which resulted in a delay in the resumption of trial. On 20 May 2005, the Registrar withdrew the assigned lead counsel. On completion of the required procedures by the accused, co-counsel was appointed lead counsel on 8 June 2005. The trial is now scheduled to resume on 21 October 2005.

The Prosecutor v. André Rwamakuba

26. The trial of this accused, who was alleged to have been the Minister of Primary and Secondary Education, commenced on 9 June 2005. Fourteen Prosecution witnesses have already testified. The accused was originally indicted and being tried with three other accused in the *Karemera et al.* case (see para. 23). On 14 February 2005, the accused was severed from that case following a motion from the prosecution. A separate and amended indictment against the accused was accordingly filed on 23 February 2005.

Pre-trial matters

27. Pre-trial proceedings were conducted in seven cases involving ten accused: *The Prosecutor v. Bikindi*, *The Prosecutor v. Karemera, Ngirumpatse and Nzirorera*, *The Prosecutor v. Kabuga*, *The Prosecutor v. Karera*, *The Prosecutor v. Hategekimana and Nizeyimana*, *The Prosecutor v. Rukundo* and *The Prosecutor v. Zigiranyirazo*. Three initial appearances were held following the amendments of indictments (*Karemera et al.*, *Rwamakuba* and *Zigiranyirazo* cases). The Chamber also rendered 154 decisions (69 written and 85 oral).

Appeals Chamber

28. During the period under review, there was a significant increase in the workload of the Appeals Chamber, with appeals of judgement in 10 cases, as well as 28 interlocutory appeals and 1 motion for review under consideration. The Appeals Chamber delivered 4 judgements and rendered 28 interlocutory decisions and 170 pre-appeal orders and decisions.

(a) Appeals on the merits

Eliézer Niyitegeka v. The Prosecutor

29. The hearing of the appeal submissions was held on 21 and 22 April 2004 in Arusha, and judgement was delivered on 9 July 2004. The Appeals Chamber dismissed Niyitegeka's appeal in its entirety and affirmed the sentence of imprisonment for the remainder of his life which had been imposed by the Trial Chamber.

The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana

30. Pre-appeal procedures were completed during the reporting period, with a substantial number of pre-appeal decisions being issued by the Appeals Chamber. The Appeals Chamber dismissed two motions for admission of additional evidence pursuant to rule 115. Following a request from counsel in the case, the hearing of the appeal was postponed until 6 to 8 July 2004. The Appeals Chamber rendered its judgement on 13 December 2004 in Arusha. It quashed a number of the convictions against both appellants. It affirmed the sentences of 10 years' imprisonment and 25 years' imprisonment imposed by the Trial Chamber on Elizaphan Ntakirutimana and Gérard Ntakirutimana, respectively.

The Prosecutor v. Laurent Semanza

31. The Appeals Chamber granted a motion under rule 115 for admission of additional evidence. Hearings were held on 13 and 14 December 2004 in Arusha, during which the Appeals Chamber heard the additional evidence and the parties' submissions on the merits of the appeal. Judgement was delivered on 20 May 2005. The Appeals Chamber partly reversed a conviction for complicity in genocide; reversed an acquittal for genocide and entered a conviction for genocide; partly reversed a conviction for aiding and abetting extermination as a crime against humanity and entered a conviction for ordering extermination; reversed acquittals for two counts of serious violations of common article 3 of the 1949 Geneva Conventions and of the 1977 Additional Protocol II thereto and entered convictions under these counts for ordering and aiding and abetting murders, instigating rape, torture and murder and for committing torture and intentional murder; affirmed the remainder of the convictions entered by the Trial Chamber; and quashed the sentence of 25 years' imprisonment and entered a new sentence of 35 years' imprisonment, subject to credit for time already served and to a six-month reduction for violations of fundamental pre-trial rights, as ordered by the Trial Chamber.

Juvenal Kajelijeli v. The Prosecutor

32. The Appeals Chamber and the pre-appeal judge issued several pre-appeal decisions and two decisions on motions for admission of additional evidence under rule 115 filed by the appellant. Following postponement of the appeal hearings at the request of the appellant's counsel, the Appeals Chamber heard the parties' submissions on 7 March 2005 in Arusha. The Appeals Chamber rendered its judgement on 23 May 2005, vacating the appellant's convictions for genocide and extermination insofar as they were based on a finding of superior responsibility, finding that the appellant's fundamental rights were seriously violated during his arrest and pre-trial detention, and setting aside the two sentences of imprisonment

for the remainder of his life and one sentence of 15 years' imprisonment imposed by the Trial Chamber and converting them into a single sentence of 45 years' imprisonment, subject to credit for time already served.

Jean de Dieu Kamuhanda v. The Prosecutor

33. Pre-appeal procedures were completed during the reporting period. The Appeals Chamber partially granted the appellant's request to admit additional evidence and heard witnesses in respect of such evidence on 18 and 19 May 2005 in Arusha. On 19 May 2005, the Appeals Chamber also heard the parties' submissions on the merits of the appeal. The case is currently under deliberation, with the judgement expected in the fall of 2005.

The Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe

34. Pre-appeal procedures were ongoing during the reporting period, with a substantial number of pre-appeal decisions being issued by the Appeals Chamber and the pre-appeal judge, including a decision dismissing a prosecution motion for admission of additional evidence pursuant to rule 115 against Bagambiki, who had been acquitted of all charges by the Trial Chamber. The case is being prepared for a hearing before the end of 2005.

The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze

35. Pre-appeal procedures were ongoing during the reporting period, with a substantial number of pre-appeal decisions being issued by the Appeals Chamber and the pre-appeal judge, including several decisions dismissing motions for leave to present additional evidence under rule 115. Pre-appeal proceedings were stayed until a number of issues concerning the assignment of counsel to appellants Ngeze and Barayagwiza were resolved. Three status conferences were held to ensure that the proceedings were not unduly delayed.

The Prosecutor v. Sylvestre Gacumbitsi

36. The briefing was completed during the reporting period and the case is being prepared for a hearing.

Emmanuel Ndindabahizi v. The Prosecutor

37. Pre-appeal procedures were ongoing during the reporting period, with the Appeals Chamber granting a motion for the presentation of additional evidence pursuant to rule 115. The defence team was recomposed, and briefing is expected to be completed shortly after the close of the reporting period.

Mikaeli Muhimana v. The Prosecutor

38. The pre-appeal judge granted the appellant's request for extension of time for filing the notice of appeal from the trial judgement of 28 April 2005 until no more than 30 days from when the French text of the judgement becomes available.

(b) Interlocutory appeals: most significant decisions

The Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jérôme Bicamumpaka and Prosper Mugiraneza

39. On 15 July 2004, the Appeals Chamber rendered a decision on Mugiraneza's appeal against the decision of the Trial Chamber on exclusion of evidence by directing the Trial Chamber to reconsider Mugiraneza's request.[3] The Appeals Chamber also dismissed the Prosecutor's counter-appeal.

The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and André Rwamakuba

40. On 23 July 2004, the Appeals Chamber ruled on Rwamakuba's appeal against the Trial Chamber's decision regarding the application of the theory of joint criminal enterprise to the crime of genocide pursuant to rule 72 (E), stating that it was timely and satisfied the requirements of rule 72 (D) (iv), as it challenged the indictment on the ground that it did not relate to any of the proscribed grounds under article 6 of the statute.[4] Having decided on the admissibility of the appeal, the Appeals Chamber rendered a decision on 22 October 2004 dismissing an appeal by counsel for Rwamakuba against the Trial Chamber's decision on preliminary motion regarding application of joint criminal enterprise to the crime of genocide. It confirmed the jurisdiction of the Tribunal to try an accused for genocide on a theory of joint criminal enterprise on the ground that criminal responsibility for genocidal acts through participation in a common purpose or joint criminal enterprise is recognized by customary international law. The Appeals Chamber added that the statement in *Tadić* that customary international law permitted application of the "notion of common purpose" to all crimes within the jurisdiction of the Tribunal, including genocide, appears to be logically and legally correct, regardless of whether it is considered to be *obiter dictum*.[5]

41. The presiding judge at the trial level withdrew from the case, and the remaining judges decided to continue the trial with a substitute judge. The accused appealed, and on 21 June 2004 the Appeals Chamber directed the remaining judges to reconsider their decision after giving the parties an opportunity to be heard and taking account of the submissions as to whether it would be in the interests of justice to continue the trial with a substitute judge. After receiving submissions from the parties, the remaining judges unanimously decided that it would be in the interests of justice to continue the trial with a substitute judge, pursuant to rule 15 bis (D) of the rules. The Appeals Chamber was seized and, on 28 September 2004, rendered an urgent decision (with reasons to follow) following a number of appeals concerning the decision of the remaining judges of the Trial Chamber to continue the trial with a substitute judge pursuant to rule 15 bis. By a majority decision, the Appeals Chamber held that the remaining judges had erred in the exercise of their discretion and, accordingly, granted the appeals and quashed the impugned decision.[6]

The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali

42. On 5 July 2004, the Appeals Chamber partially granted appeals by both appellants against the Trial Chamber's "Decision on the Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible". The

Appeals Chamber considered lead counsel's month-long illness as good cause for extension of time pursuant to rule 116 (A). It dismissed the appeal under rule 89 (C) that the Trial Chamber should not have allowed the prosecution to adduce evidence on allegations which were not clearly pleaded in the indictment and stated that although on the basis of the indictment it was not possible to convict Nyiramasuhuko in respect of her presence at the installation of Ndayambaje, evidence of that meeting could be admitted to the extent that it might be relevant to the proof of any allegation pleaded in the indictment. On 27 September 2004, the Appeals Chamber dismissed Nyiramasuhuko's request for reconsideration of the appeal decision on the ground that the reason advanced by the appellant — that certification had been granted before the Appeals Chamber's decision of 5 July 2004 and that she had presented arguments on the admissibility of the evidence of witnesses — did not constitute good cause within the meaning of rule 116 (A).[7]

43. On 4 October 2004, the Appeals Chamber dismissed Nyiramasuhuko's appeal concerning a decision to admit as evidence a diary allegedly belonging to her. The Appeals Chamber noted that the reasons for which the Trial Chamber had certified the appeal were unclear, as the matters contained therein appeared to relate to the admissibility of the diary as evidence, which should be dealt with by the Trial Chamber in accordance with rule 89 (C). That provision grants a Trial Chamber broad discretion in assessing the admissibility of evidence.[8]

The Prosecutor v. Joseph Nzabirinda

44. On 28 January 2005, the Appeals Chamber disposed of Nzabirinda's Notice of Appeal of the Trial Chamber's "Decision on Joseph Nzabirinda's Motion to Set Aside the Registrar's Decision to Withhold the Amount Owed to Him in Meeting the Cost of His Defence". The Appeals Chamber held that the impugned decision was without interlocutory appeal and that it lacked jurisdiction to consider the Appellant's Notice of Appeal.[9]

The Prosecutor v. Aloys Simba

45. On 29 July 2004, the Appeals Chamber dismissed Simba's appeal relating to alleged defects in the indictment on the basis of article 7 of the statute. It noted that no one may be indicted for a crime committed outside the prescribed jurisdictional scope of the Tribunal but found that the Trial Chamber's statement that the reference in the indictment to events which allegedly took place prior to 1994 provided "a context or background and may be a base on which to draw inferences as to intent or other elements of the crimes alleged to have been committed within the temporal jurisdiction" correctly reflected the law of the Tribunal.[10]

46. On 30 September 2004, the Appeals Chamber dismissed Simba's appeal under rule 72 (D) challenging the decision of the Trial Chamber, which had found that the second indictment adequately pleaded the *mens rea* for joint criminal enterprise and that the allegations relating to murder as a crime against humanity were adequately connected to the widespread and systematic attack.[11]

(c) Motion for review

Eliézer Niyitegeka v. The Prosecutor

47. The appellant is seeking a review of the appeal judgement of 9 July 2004 (see para. 29) on the ground that the prosecution failed to disclose to him alleged exculpatory statements by witnesses, while it disclosed them in another case. The briefing is ongoing.

C. Office of the Prosecutor

48. The Prosecutor has continued his work on the Tribunal's completion strategy in consultation with the President (see paras. 3 and 4). He will continue to concentrate on those accused who are alleged to have been in positions of leadership and bear the gravest responsibility for the crimes committed. Accused and suspects who are alleged to have been mid- to low-level participants will be transferred to national jurisdictions, including Rwanda, for trial. The decision to transfer cases to national jurisdictions after the confirmation of indictments is a judicial one and will be taken by the Trial Chambers on a case-by-case basis.

49. Negotiations with Rwanda for the transfer of indicted persons under rule 11 bis were advanced when an understanding was reached on how transfers would take place and what conditions would be expected by the Office of the Prosecutor to prevail in Rwanda for it to initiate applications under rule 11 bis. Rwanda published draft legislation to facilitate the transfer of accused persons to it for trial. Efforts to transfer cases to national jurisdiction were advanced by the transfer of 15 dossiers of unindicted suspects to the Government of Rwanda. The Office of the Prosecutor has negotiated with other countries to prosecute some of its targets. One country has already agreed to prosecute a suspect, and efforts are continuing to get other countries to do the same.

50. To ensure that as many fugitives as possible are arrested sufficiently early to enable the Chambers to complete their trials before the end of 2008, the Office of the Prosecutor has stepped up its tracking activities. The Prosecutor has visited a number of African countries in which some of the fugitives are suspected to be and pleaded with national authorities to cooperate more significantly in the tracking and arrest of these fugitives.

51. The Investigations Division completed investigations on new targets within the completion strategy deadline of 31 December 2004. Of the 16 suspects being investigated, the Prosecutor decided to indict 8.

52. The Office of the Prosecutor has continued with its plans to make all cases against current detainees "trial-ready" so that there will always be cases to try whenever a Trial Chamber becomes available.

53. Due to the imposition of a recruitment freeze in the first seven months of the period under review, plans to reduce the vacancy rate were frustrated. However, in the five remaining months of the period, the Office of the Prosecutor made great strides to further reduce the vacancy rate.

54. In November 2004, the Office of the Prosecutor hosted a successful colloquium of prosecutors of international criminal tribunals. The aim of the

colloquium was to discuss common problems, share ideas and solutions and adopt best practices.

D. Registry

55. The Registry continues to support the judicial process by daily servicing the other organs of the Tribunal. It also fully participates in the implementation of the Completion Strategy. Focus is on filling some vacancies in order to optimize the work of staff, whose number is 886. A wide range of agreements has been signed with states and institutions. They cover reinforcement of sentences, movements and relocation of witnesses, and financial support for activities not catered for in the regular budget.

Office of the Registrar

56. The External Relations and Strategic Planning Section has continued projecting a positive image of the Tribunal and garnering financial and political support. Regular press briefings were organized in Nairobi and Arusha.

57. During the period under review, several high-level guests visited the Tribunal. Prominent among the visiting dignitaries were the President of Germany, Johannes Rau; the Crown Prince of Norway, Haakon Magnus; the Prime Minister of Norway, Kjell Magne Bondevik; the Under-Secretary-General and Special Adviser on Africa to the Secretary-General; accredited ambassadors of more than 30 countries based in Dar es Salaam and Nairobi; and high representatives of the European Union.

58. The Tribunal's outreach programme continued successfully, with the Information Centre in Kigali serving as its focal point. The Centre, which was inaugurated in September 2000, is visited by 100 persons daily, including students, journalists, civil servants, judges, lawyers and ordinary citizens. There are frequent press conferences, briefings and films on the Tribunal at the Centre.

59. High-level contacts between Rwanda and the Tribunal were maintained. Senior officials of the Tribunal and senior officials of the Rwandan Government met as often as necessary to strengthen cooperation and to increase awareness of and support for the Tribunal's work. These meetings had a positive impact on the functioning of the Tribunal. The Tribunal has developed an awareness-raising programme using a range of techniques in order to explain the Tribunal's work and its relevance to Rwanda. Particular attention has been given to the availability of printed materials, regular radio broadcasts and speakers in Kinyarwanda. The Tribunal has secured funding for the setting up of new centres in provinces that will serve as focal points for provincial information activities relating to its work.

60. During the period under review, the External Relations and Strategic Planning Section mobilized approximately $3,000,000 in extrabudgetary funds.

61. Rwandan journalists from the Office rwandais de l'information and the Ministry of Justice broadcast on a daily basis from Arusha. The Tribunal, in collaboration with these two institutions, aims to fill the information gap regarding its work in Rwanda.

62. Judgements are broadcast live in Rwanda by means of a telephone link to Radio Rwanda. Interviews are given whenever necessary. The Tribunal gave full support to the international independent media organization Internews for the production of documentaries on Rwandan post-genocide justice.

63. One of the cornerstones of the Tribunal's outreach programme is the training of Rwandan jurists, advocates and human rights practitioners. Such capacity-building includes seminars and workshops aimed at strengthening their knowledge in areas such as international humanitarian law and criminal law and their familiarity with the Tribunal's jurisprudence.

64. The Tribunal has strong cooperation with various Rwandan institutions of higher education. Two of the successful outreach projects are the Internship and Legal Researchers Programmes, which provide a number of promising young lawyers with hands-on experience in the core legal functions of the Tribunal. The latter has also a special programme for Rwandan law students. Under the special programme, six law students are provided with research bursaries which enable them to carry out thesis research in areas linked to the work of the Tribunal.

65. Important developments organized by the Gender Advisory Unit include the redeployment of a post of witness management coordinator from Arusha to Kigali and the recruitment of relevant expertise (a psychologist, gynaecologist, nurse-psychologist and lab technician in 2004) in Kigali under the technical supervision of the Tribunal's Chief Medical Doctor.

66. An evaluation effected in March 2005 covering 2004 demonstrated that in-house psychological counselling and other medical support measures had yielded positive dividends. The medical support team has generated relevant data necessary for the effective medical and logistical management of witnesses. Rwanda-based confirmed witnesses made 3,289 visits to the Tribunal's annex clinic and demonstrated confidence in the services rendered. The total cost of hospital referrals and hospitalizations in 2004 decreased by more than 80 per cent from 2003 costs. Three hundred and seventy-three psychological counselling sessions were held relating to HIV/AIDS, post-conflict trauma and preparations for cases, and 156 gynaecological were attended to. The total number of HIV/AIDS cases being followed to date is 39, and 1,067 patients have received nursing care. Sustained monitoring and evaluation is promoted through a system of weekly, quarterly and annual reporting. The Trust Fund allocation for the Medical Support Programme for witnesses in 2005 is estimated at $237,309.

67. In order to mobilize witnesses, transportation costs to and from the clinic are reimbursed. Emergency services are available seven days a week, and a roster of medical doctors on call for emergencies has been set up. Security is provided at all times, and the confidentiality of services rendered is ensured. The Registrar approved monthly nutritional supplements for all witnesses with HIV/AIDS; those supplements meet the standards of other HIV/AIDS centres in Rwanda.

68. A booklet in French, English and Kinyarwanda on testifying in the Tribunal is available to advise witnesses on the applicable procedures.

Judicial and Legal Services Division

69. During the period under review, the Court Management Section continued to facilitate the simultaneous functioning of the Chambers and strove to efficiently

support the judicial process by expanding the duties and responsibilities of the staff on board. A pilot project at the Tribunal headquarters for the electronic provision of documents to the Trial Chambers and to defence counsel has been successfully tested and is now in its implementation phase.

70. The TRIM electronic record-keeping system was upgraded to TRIM Context. In regard to public access to records, it has been ensured that any document for which vetting has been completed will be available immediately. This activity is aimed at providing staff and the public with a flexible choice of tools for research and document retrieval.

71. During the period under review, the Court Reporters Unit continued to make draft transcripts readily available in order to assist the judges and parties. It also introduced the framework of a pilot project which provides transcripts of proceedings instantly.

Defence Counsel and Detention Management Section

72. In accordance with the minimum guarantees afforded to an accused in the interest of justice, 2 duty counsels were assigned to represent indigent accused persons in the reporting period, in addition to 10 lead counsels and 9 co-counsels. This brought the total number of counsels currently assigned by the Tribunal to 88: 5 duty counsels, 53 lead counsels and 30 co-counsels. During the same period, 6 lead counsel and 3 co-counsels were withdrawn because of exceptional circumstances.

73. The Section faced several challenges during the period under review, including the rationalization of legal aid. There was a need to balance the reality of budget constraints against the need to avoid prejudice to indigent accused persons. In this regard, new mechanisms have been finalized and are ready for implementation. The Section maintained vigorous management of the current system by closely scrutinizing the time spent on activities charged by defence team members and their requests for fact-finding missions. Intensive work was carried out on the new system of remunerating assigned counsel. New lump-sum mechanisms are ready for implementation; consultations on this matter are ongoing. The lump-sum system is expected to reduce costs and introduce a strict monitoring of payments to defence team members. Work programmes considered reasonable and necessary during negotiations will be agreed upon with defence teams in advance, using codes based on actions under the rules of procedure and evidence.

74. During the period under review, the Financial Investigator conducted indigence investigations of accused persons. This will deter any abuse of the legal aid scheme.

75. The United Nations Detention Facility at Arusha had a total of 57 detainees. It is also housing witnesses; it received 50 witnesses from Rwanda and one from Mali. Construction, including that of the censor's office, a closed circuit television system and a gymnasium and exercise yard, was completed. The International Committee of the Red Cross visited the detention facility and reported that it was satisfied with its management.

Witnesses and Victims Support Section

76. During the period under review, the Witnesses and Victims Support Section, which since 2000 had been divided into two Sections, was merged into a single Section. It oversaw the movement of 185 prosecution witnesses and 115 defence witnesses from 21 countries. The Section successfully negotiated with all relevant national authorities for the provision of temporary travel documents, enabling the witnesses to travel to and from Arusha.

77. The Section has intensified its post-trial monitoring activities in the host countries of witnesses. Many prosecution and defence witnesses residing in Rwanda enjoyed a wide range of assistance aimed at improving their medical, psychological and physical rehabilitation. A few vulnerable witnesses were relocated. Transcripts from court hearings were redacted prior to being made public.

78. The Section has pursued its policy of building up a long-lasting framework of cooperation between many countries where witnesses reside. Some national officials assisted the Section in escorting witnesses. The Section has enjoyed excellent cooperation from the regional UNHCR agencies of the Office of the United Nations High Commissioner for Refugees in South Africa, Zambia, Cameroon, the Congo, Benin, Togo and Kenya with regard to the movement and protection of witnesses.

Language Services Section

79. The Language Services Section continued to provide interpretation, translation and reproduction services to the Chambers, the parties and the Registry. Despite being understaffed, the Section adequately serviced the trials and other support activities. Eleven persons were trained in simultaneous interpretation to and from Kinyarwanda; four of them are awaiting recruitment. The Section's expertise is also shared with sister organizations such as the Special Court for Sierra Leone, which, in the framework of inter-tribunal cooperation, benefited from the work of the Tribunal's trainers in simultaneous interpretation.

Legal Library and Reference Section

80. The Legal Library continued its activities, including information acquisition and processing, delivery of information, reference service, outreach activities and collaboration with United Nations peer libraries. Lists of new acquisitions were produced on a monthly basis to keep users informed of new additions to the library catalogue. The online public access catalogue was implemented for internal and external access to the library catalogue.

81. The Library and the External Relations and Strategic Planning Section implemented "Capacity-building in Rwanda" activities. This involved the training of 200 librarians, law students and lecturers in document-processing techniques and online legal research. About 45 staff members were trained in Westlaw and Nexis.

Division of Administrative Support Services

82. The Section adequately serviced the various organs of the Tribunal. All non-expendable assets were bar-coded for effective control. The Building Management Section created and equipped the fourth courtroom in only 30 days. Good-quality transport service has been provided by the Transport Section.

83. During the period under review, 205 interns and 23 legal researchers from 44 countries gained experience at the Tribunal.

84. There were 156 vacancies, a rate of 15 per cent, during the period under review. Staff members came from 86 countries. The staff gender distribution was 67 per cent male and 33 per cent female. The number of staff members lost through resignations was 112. Welfare measures aimed at staff retention are being implemented. In this regard, 110 staff development courses were conducted by the Tribunal.

85. In the area of security, various measures were implemented, such as closed circuit television and access-control measures.

86. The Health Service Unit had increased consultations because of the increase in witness arrivals, and, hence, the number of consultants and nurses has increased. Staff outreach support is also provided. First-aid training is given to drivers, security officers and other staff.

II. Recommendations

87. The Tribunal recommends that:

(a) It continue to receive sufficient resources to enable it to complete its work within the time frames stipulated in Security Council resolutions 1503 (2003) and 1534 (2004);

(b) Member States continue to facilitate the travel of witnesses to and from the seat of the Tribunal, particularly in cases where witnesses do not have the required travel documents;

(c) Member States remain receptive to discussions relating to the possible transfer of cases to their respective jurisdictions for trial;

(d) Member States assist and cooperate in the arrest and transfer of accused and suspects who remain at large.

III. Conclusion

88. The Tribunal is committed to bringing to justice those persons who were the alleged architects of the genocide and violations of international humanitarian law committed in Rwanda in 1994. In this process, it will bring justice to victims of the massive crimes that were committed and establish a record of facts that can aid reconciliation in Rwanda. The Tribunal will also leave a legacy of international jurisprudence that can guide future courts and deter the future commission of these grave crimes.

89. The Tribunal acknowledges the support and assistance received from the Secretary-General of the United Nations, Kofi Annan, and expresses its appreciation to Member States for their continuing interest in and support of its activities.

Notes

[1] On 21 May 2005, Judge Møse was re-elected President and Judge Ramaroson was elected Vice-President. Judge Ramaroson replaced Judge Andrésia Vaz (Senegal), who did not seek re-election.

[2] Judge de Silva was appointed on 3 August 2004 by the Secretary-General to replace Judge Asoka de Zoysa Gunawardana, who retired on 30 June 2004.

[3] "Decision on Mugiraneza's Interlocutory Appeal against the Decision of the Trial Chamber on Exclusion of Evidence", 15 July 2004.

[4] "Decision on the Validity of Appeal of André Rwamakuba against Decision Regarding Application of Joint Criminal Enterprise to the Crime of Genocide pursuant to Rule 72 (E) of the Rules of Procedure and Evidence", 23 July 2004.

[5] "Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide", 22 October 2004.

[6] "Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material", 28 September 2004; and "Reasons" for the Decision, 22 October 2004.

[7] "Decision on the Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible", 5 July 2004; "Decision on Pauline Nyiramasuhuko's Request for Reconsideration", 27 September 2004.

[8] "Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence", 4 October 2004.

[9] "Decision on Joseph Nzabirinda's Notice of Appeal", 28 January 2005.

[10] "Decision on Interlocutory Appeal Regarding Temporal Jurisdiction", 29 July 2004.

[11] "Decision on Validity of Appeal Pursuant to Rule 72 (E) of the Rules of Procedure and Evidence", 30 September 2004.